

**OFFICE OF THE
ATTORNEY GENERAL**

DON SIGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 261-7400



STATE OF ALABAMA

89-00168

FEB 10 1989

Honorable Donald B. Sweeney, Jr.
Rives & Peterson
1700 Financial Center
505 North Twentieth Street
Birmingham, AL 35203-2607

Education, Boards of - Schools -
Lotteries - Gambling

Under Article IV, Section 65 of Constitution of Alabama of 1901, school board is prohibited from selling tickets to raffle in which prize is awarded by chance.

School board may sell tickets for chance to participate in game of skill, with winner of game awarded substantial prize, so long as outcome of game does not depend in material degree upon element of chance.

Question of whether the outcome of such game depends in material degree upon element of chance must be decided on case-by-case basis.

Dear Mr. Sweeney:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Are raffle contests in which donated prizes are raffled off to persons who have purchased raffle tickets permissible in Alabama?

2. Are games of skill permissible where potential participants purchase a ticket which, if their name is drawn, entitles them to participate in the game, with the winner of the competition being given a substantial prize? An example of this would be a basketball shooting contest wherein the participants purchase a ticket making them eligible to participate in the contest. If their name is drawn and they win the contest, the winner is awarded a substantial prize.

FACTS AND ANALYSIS

In the opinion request you state the following:

As attorney for the Mountain Brook Board of Education, I have been requested by the superintendent and board to ask whether raffle contests by local schools are in violation of Alabama law.

For years, local schools throughout the state have asked merchants to donate prizes which are then raffled off at special fund-raising events. This has been and continues to be a fairly common practice. The money raised by selling tickets for the raffle contest are used to supplement local school funds for school projects. In fact, many schools are significantly dependent on the money raised by these raffle contests to supplement available school funds.

Please advise whether the public schools may have raffle contests to raise money for school projects.

Article IV, Section 65 of the Constitution of Alabama of 1901 prohibits conducting lotteries in the State of Alabama, and specifically provides:

"The Legislature shall have no power to authorize lotteries or gift enterprises for

any purpose and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets or tickets in any scheme in the nature of a lottery; and all acts or parts of acts heretofore passed by the Legislature of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby voided."

In the opinion to Honorable Gwin Wells, Mayor, under date of December 6, 1984, this office stated that the Alabama Supreme Court has held time and again that Section 65 of the Alabama Constitution prohibits the Alabama Legislature from allowing any person to engage in the business of conducting a lottery.

In the Opinion of the Justices, 397 So.2d 546 (Ala.1981), the court defined the elements of a lottery as: (1) a prize, (2) awarded by chance, and (3) for a consideration.

Because you state in the opinion request that the raffle contest consists of a donated prize which is awarded by chance for a consideration, i.e., the purchase of a ticket, it is the opinion of this office that such a practice by a school board constitutes a violation of the prohibition against engaging in the business of conducting a lottery.

Moreover, Code of Alabama 1975, § 13A-12-22 provides:

"(a) A person commits the crime of promoting gambling if he knowingly advances or profits from unlawful gambling activity otherwise than as a player.

"(b) Promoting gambling is a Class A misdemeanor."

In light of this statute, a person involved in the carrying out of the lottery, other than as a player, could be charged with promoting gambling in contravention of § 13A-12-22.

With regard to your second question, in the opinion to Honorable Doug Valeska, District Attorney, under date of September 20, 1988, this office noted that the term "gambling" is defined in Code of Alabama 1975, § 13A-12-20(4) as "... risk[ing] something of value upon the outcome of a contest of chance" A "contest of chance" is defined in § 13A-12-20(3) as:

"Any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein."
(Emphasis added)

In the example you give, i.e., the basketball shooting contest, it is our opinion that the outcome of the contest depends primarily on the element of the participant's skill, rather than chance, and thus, this type of contest would not fall within the statutory definition of a "game of chance."

We must point out, however, that each case must necessarily stand on its own facts, and it is not the function of the opinions division of this office to state whether or not criminal statutes of the state have been violated. Rather, this would be a question to be determined by a jury and/or judge in a court of competent jurisdiction.

CONCLUSION

Under Article IV, Section 65 of the Constitution of Alabama of 1901, a school board is prohibited from selling tickets to a raffle in which a prize is awarded by chance.

A school board may sell tickets for the chance to participate in a game of skill, with the winner of the game awarded a substantial prize, so long as the outcome of the game does not depend in a material degree upon an element of chance.

The question of whether the outcome of such a game depends in a material degree upon an element of chance must be decided on a case-by-case basis.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:


JEAN WILLIAMS BROWN
Assistant Attorney General